IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1417 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JHULEKHABEN AMIRBHAI DIWAN - Appellant(s)

Versus

IQSHANHAJI ISMAILHAJI MOHAMMAD & 2 - Defendant(s)

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Appearance :

MR MTM HAKIM for Petitioner No(s).: 1.

NOTICE SERVED BY DS for Respondent No(s).: 1,2.

MR KK NAIR for Respondent No(s).: 3.

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 11/08/2005

ORAL JUDGMENT

1. Present appeal is preferred by the appellant to challenge the judgment and award rendered by M.A.C.Tribunal (Aux.), Bharuch in M.A.C.Petition No.11 of 1993 delivered on 20th August,2002. The appellant had

preferred said Motor Accident Claim petition claiming compensation of Rs.50,000/- on account of accidental injuries sustained by her in a vehicular accident that occurred on 3.7.1990 at about 6.30 p.m. near Buva Navinagari within the territorial jurisdiction of Amod Police Station involving Auto Rickshaw No.GRV 1924 in the accident.

2. The appellant was travelling in the said rickshaw which was driven by respondent no.1 and it was alleged that because of his negligent driving, the auto-rickshaw got turtled causing injuries to the appellant. The appellant preferred a claim of Rs.50,000/- as compensation for injuries on legs which resulted into permanent partial disability. The Tribunal, after considering evidence led by the appellant, awarded a compensation of Rs.31,200/- with proportionate cost and interest @ 9% per annum from date of application till realization. Aggrieved by the said award, the appellant has challenged the same by way of this appeal on the ground that the Tribunal has under-assessed the quantum of compensation.

3. Learned Advocate Mr.Hakim appears for the appellant, and learned Advocate Mr.V.A.Mansuri appears for learned Advocate Mr.K.K.Nair to represent respondent No.3.

Respondent Nos.1 and 2, though served with notice, have chosen not to contest this appeal. In peculiar facts and circumstances of the case, the matter is taken up for final hearing by consent of parties.

4. Learned Advocate Mr.Hakim submitted that the Tribunal has erred in not considering compensation under head of actual loss of income. The Tribunal has also erred in computing future economic loss as the Tribunal has not considered prospective rise in income. According to Mr.Hakim, the compensation under head of pain, shock and suffering is also not just and adequate. The Tribunal has awarded Rs.10,000/- over looking the fact that the appellant, a lady, is suffering from a limp due to the injuries. There is wasting of muscle and difficulty in squatting and sitting with cross-legs. Compensation of Rs.20,000/- ought to have been awarded under the head of pain, shock and suffering.

5. Learned Advocate Mr.Mansuri has opposed this appeal. According to him, the Tribunal has awarded adequate compensation after considering all relevant aspects. The disability part was agreed upon between the parties and, therefore, the appeal may not be allowed.

6. It is crystal clear that the appellant has sustained

injuries which resulted into wasting of thigh muscles and a limp. It also appears that there was fracture of shaft of left femur and she was required to be operated upon. The claimant, therefore, must have been immobilized. She says that she was treated as an indoor patient by Dr.Shaikh for 20 days and that she could not attend to her work for about 8 months. The Tribunal has not awarded compensation under head of actual loss of income, although the Tribunal has accepted that the applicant was working as a labourer and was earning Rs.900/- per month. With 20 days of hospitalization and surgery following fracture injuries, the immobilization of the appellant can safely be accepted at 4 months, if not 8 months. This would result into actual loss of Rs.3600/- considering the income at Rs.900/- per month as assessed by the Tribunal.

7. The Tribunal has awarded Rs.10,000/- under head of pain, shock and suffering. According to learned Advocate Mr.Hakim, at least 20,000/- should have been awarded. It is clear that the appellant has sustained fracture of left femur and she was required to be operated upon, she was in hospital for 13 days and thereafter, she must have remained under plaster. She must have been immobilized for at least 4 months, as discussed above. As per medical certificate issued by Dr.Sunil Nagrani, Orthopedic

Surgeon, the injuries have resulted into a limp which is painful. In the opinion of this Court, ends of justice would be met if an amount of Rs.12,000/- is awarded under head of pain, shock and suffering, as against Rs.10,000/- awarded by the Tribunal.

8. There is evidence to show that the claimant was in hospital for a period of about 13 days and was attended to by her husband. She has produced bills worth Rs.2958.10 and the Tribunal has, therefore, awarded Rs.3000/- under head of medical expenditure which appears to be justified. The Tribunal has awarded Rs.2000/- under head of special diet and other expenditure which also appears to be justified.

9. Coming to the question of quantification of compensation under head of future loss of income, it may be noted that the Tribunal has considered income of the claimant to be Rs.900/- per month, as against the claim of the claimant to be earning Rs.25/- to Rs.30/- per day and considering 10% disability while adopting multiplier of 15, Rs.16,200/- is awarded under head of future loss of income. The Tribunal has not considered prospective rise in income. It is a matter of common experience that by fall in value of rupee and by progress in the work and profession, there is always an increase in the income of

individual irrespective of vocation and, therefore, while assessing future economic loss, prospective rise in the income has to be taken into consideration. In the opinion of this Court, therefore, the Tribunal ought to have taken into consideration prospective rise in income. In the opinion of this Court, considering the prospective rise in the income of appellant, if the amount of compensation under head of future economic loss is rounded off to Rs.20,000/-, ends of justice would be met. The total amount of compensation awardable to the appellant, therefore, would be Rs.40,600/- as per computation given below, as against Rs.31,200/- awarded by the Tribunal.

	Rs. 3600/-	For actual loss of income.
	Rs.12000/-	For Pain, Shock & Suffering.
	Rs. 3000/-	For Medical Expenditure
	Rs. 2000/-	For Special Diet
	Rs.20000/-	For Future Loss of Income.
Total	Rs.40,600/-	

9.1 The claimant, therefore, would be entitled to an additional compensation of Rs.9400/- with proportionate cost and interest at the same rate as awarded by the Tribunal. The appeal stands allowed to that extent. Award accordingly.

10. 60% of the additional amount awarded would be invested on the same lines as directed by the Tribunal.

(A.L.DAVE,J.)

(vipul)